

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON L. TROCHER and ENVIRONMENTAL PROTECTION AGENCY,  
EASTERN NEW YORK CARRIBEAN SECTION, New York, NY

*Docket No. 99-1440; Submitted on the Record;  
Issued March 1, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's medical benefits on December 30, 1998.

On November 16, 1994 appellant, then a 36-year-old environmental engineer, filed a notice of occupational disease alleging that she developed bilateral carpal tunnel syndrome due to her federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome on April 4, 1995. She filed a notice of recurrence of disability on March 6, 1996. The Office accepted this claim on April 1, 1996. Appellant returned to light duty on September 26, 1996 working four hours a day and then full time on December 16, 1996.

Appellant filed a notice of occupational disease on January 21, 1997 alleging that she developed the additional conditions of bilateral ulnar neuropathy, neurogenic thoracic outlet syndrome and medial epicondylitis due to employment duties.

By decision dated February 18, 1997, the Office denied appellant's claim for a consequential emotional condition.<sup>1</sup>

By decision dated May 8, 1997, the Office denied appellant's claim for continued disability due to her accepted condition of bilateral carpal tunnel syndrome and found that she had not establish any other employment-related condition. The Office proposed to terminate appellant's medical benefits due to her bilateral carpal tunnel syndrome on May 8, 1997.

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<sup>1</sup> As the Office issued its final decision on this issue on February 18, 1997 more than one year prior to the date of appellant's appeal to the Board on March 1, 1999, the Board will not consider this issue on appeal. 20 C.F.R. § 501.3(d)(2).

Appellant requested an oral hearing on May 15, 1997. By decision dated and finalized September 25, 1997, the hearing representative set aside the Office's May 8, 1997 decision.<sup>2</sup> In a letter dated November 4, 1997, appellant withdrew her request for an oral hearing and indicated that she would request reconsideration of the May 8, 1997 decision.

Appellant requested reconsideration of the May 8, 1997 decision on April 20, 1998. By decision dated December 29, 1998, the Office denied modification of the May 8, 1997 decision finding that appellant had failed to establish clear evidence of error on the part of the Office.<sup>3</sup>

By decision dated December 30, 1998, the Office terminated appellant's medical benefits due to her accepted condition of carpal tunnel syndrome.

The Board finds that the Office met its burden of proof to terminate appellant's medical benefits.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>4</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>5</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.<sup>6</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>7</sup>

In this case, appellant's attending physician, Dr. Emil F. Pascarelli, a Board-certified family practitioner of professorial rank, provided his findings on physical examination and opined that appellant was currently partially disabled due to work conditions.

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<sup>2</sup> The hearing representative set aside the May 8, 1997 decision denying appellant's continuing compensation and remanded for further development because the Office did not properly issue a notice of the proposed termination. The Office did not issue a new decision on the claim for continuing compensation and additional employment-related conditions prior to appellant's request for reconsideration on April 28, 1998. Therefore, there was no final decision for appellant to appeal through the reconsideration process and the Office improperly issued the December 29, 1998 denial of modification. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.9 (November 1993). As there is no appropriate final decision on the issues of termination of compensation and denial of additional employment-related conditions the Board will not consider these issues on appeal. 20 C.F.R. § 501.2(c).

<sup>3</sup> The Board-notes that the clear evidence of error standard is applicable only if a request for reconsideration is beyond the one-year time limitation and should not have been applied in this decision by the Office.

<sup>4</sup> *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

<sup>5</sup> *Id.*

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990).

<sup>7</sup> *Id.*

The Office referred appellant for a second opinion evaluation with Dr. William B. Head, Board-certified in both psychiatry and neurology. In a report dated January 31, 1997, Dr. Head noted appellant's history of injury and performed neurological and psychological evaluations. He found that appellant's psychiatric examination was normal and that she had no objective signs of bilateral carpal tunnel syndrome or any other condition. He stated, "I fail to find any objective neurological clinical evidence of any medical condition referable to her employment." Dr. Head also stated, "There is no permanent neurological or psychiatric condition or disability existing in this case relative to [appellant's] employment experiences." He concluded, "I fail to find any indication for any further neurological or psychiatric treatment, medication, or work-up, relative to [appellant's] claimed industrial injury."

In a report dated February 24, 1997, Dr. Pascarelli stated that appellant was partially disabled and provided his findings on physical examination. He diagnosed cumulative trauma disorder and stated that appellant remained partially disabled.

The Office properly found a conflict of medical opinion between Dr. Pascarelli, appellant's attending physician, who supported continuing medical conditions and disability and Dr. Head, the Office referral physician, who found no objective signs of any condition or disability. Section 8123(a) of the Federal Employees' Compensation Act,<sup>8</sup> provides, "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

The Office referred appellant, a statement of accepted facts and a list of specific questions to Dr. Mark S. Diamond, a Board-certified neurologist, for an impartial medical examination. In his April 24, 1997 report, Dr. Diamond provided a history of injury and findings on physical examination. He stated that appellant's clinical neurological examination was objectively normal. Dr. Diamond stated that appellant did not have positive objective signs of bilateral carpal tunnel syndrome. He noted that she lacked a true Tinel's sign at the median nerve at the wrist and that there was no atrophy of the thenar muscles. Dr. Diamond stated that the most recent electromyelogram showed no evidence of bilateral carpal tunnel syndrome. He concluded, "The patient does not have any objective neurologic condition that I can ascertain referable to her employment." Dr. Diamond added that no further neurologic treatment was indicated and that appellant could perform her full-time regular duties.

Where there are opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.<sup>9</sup> In this case, Dr. Diamond provided a detailed report based on an accurate history of injury. He noted a lack of physical findings and concluded that appellant was not disabled due to her accepted employment injury of bilateral carpal tunnel syndrome, that she had no residuals of this condition and that she did not require further medical treatment.

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<sup>8</sup> 5 U.S.C. §§ 8101-8193, 8123(a).

<sup>9</sup> *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

Following Dr. Diamond's April 24, 1997 report, appellant submitted additional reports from Dr. Pascarelli. On October 22, 1997 Dr. Pascarelli repeated his diagnosis of cumulative trauma disorder. He opined that appellant's condition was causally related to her employment duties and recommended further medical treatment. In a report dated January 16, 1998, Dr. Pascarelli stated that Dr. Diamond failed to perform tests that would rule out the clinical signs of neurogenic thoracic outlet syndrome. Dr. Pascarelli's report is not sufficient to establish that appellant has continuing medical residuals due to her accepted condition of bilateral carpal tunnel syndrome. He does not provide a diagnosis of this condition or a finding of disability as a result of the condition accepted by the Office. Furthermore, as Dr. Pascarelli was on one side of the conflict that Dr. Diamond resolved, the additional report from Dr. Pascarelli is insufficient to overcome the weight accorded Dr. Diamond's report as the impartial medical specialist or to create a new conflict with it.<sup>10</sup>

Appellant submitted a report dated February 10, 1998 from Dr. George Piligian, Board-certified in physical medicine and rehabilitation. Dr. Piligian reviewed appellant's medical records and diagnosed bilateral thoracic outlet syndrome with ulnar neuropathy, thoracic radiculopathy, right subscapularis muscle restriction with signs of nerve impingement and bilateral flexor forearm myotendinopathy. He stated that appellant had no recent signs of carpal tunnel syndrome. Dr. Piligian noted that appellant's carpal tunnel syndrome improved after she ceased keyboarding activities. He concluded that this was indirect evidence of a nerve compression while appellant was performing repetitive tasks. Dr. Piligian does not provide a clear opinion that appellant has continuing medical residuals of her carpal tunnel syndrome and does not indicate that she requires further medical treatment for this condition.

The Board finds that Dr. Diamond, the impartial medical examiner, has established that appellant has no medical residuals of her accepted condition of carpal tunnel syndrome and that she requires no further medical treatment for this condition. Neither Dr. Piligian nor Dr. Pascarelli opines that appellant continues to experience symptoms or medical residuals of her accepted carpal tunnel syndrome. Therefore, the Board finds that the Office met its burden of proof to terminate appellant's medical benefits for the accepted condition of carpal tunnel syndrome.

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<sup>10</sup> *Dorothy Sidwell*, 41 ECAB 857, 874 (1990).

The December 30, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed. The December 29, 1998 decision is vacated and upon return of the case record, the Office should further develop the claim pursuant to the hearing representative's September 25, 1997 decision.

Dated, Washington, DC  
March 1, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member